

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Services)	

**MANHATTAN TELECOMMUNICATIONS CORPORATION AND
METROPOLITAN TELECOMMUNICATIONS HOLDING COMPANY
PETITION FOR WAIVER**

Pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, Manhattan Telecommunications Corporation and Metropolitan Telecommunications Holding Company (together, "MetTel")¹ request that the Federal Communications Commission ("FCC" or "Commission") grant a waiver from the provisions of the Commission's Universal Service Fund ("USF") rules that require adjustments to MetTel's first quarter 2003 revenue projections (November 2002 quarterly submission), so as to eliminate the effect of first quarter 2003 projection errors in the annual true-up process.² MetTel under-estimated its revenue for the first quarter of 2003 and, without a waiver, would be required to contribute a greater amount into the USF than is warranted. In fact, MetTel has already determined that, absent waiver, its total 2003 contribution obligation is over \$25,000 more than the appropriate amount.

¹ Manhattan Telecommunications Corporation is the largest of several Metropolitan Telecommunications Holding Company operating subsidiaries. Effective November 3, 2004, Metropolitan Telecommunications Holding Company consolidated its FCC Form 499 filings under FCC Filer ID 823620.

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 et al., Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-239, ¶¶20, 36, rel. December 13, 2003.

AT&T Corporation (“AT&T”), SBC Communications, Verizon came to the FCC seeking identical relief, which was granted on July 20, 2004.³ For the same compelling reasons supporting waivers for these carriers, MetTel requests the Commission act swiftly and grant its waiver request.

Background

In December of 2002, the Commission adopted a new method of calculating a service provider’s contribution to the USF. This was an interim measure focused on ensuring the near term sustainability of the USF. In order to adjust for errors in revenue projections, it adopted a true-up process to “ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanism based on quarterly revenue data.”⁴ Among other revisions, the Commission decided to base carriers’ USF contribution on projected, collected end-user interstate revenues, instead of the then existing mechanism that was based on historical, gross-billed revenues.⁵

Unfortunately, because the change effective after the first quarter of 2003, carriers that under-projected the first quarter revenues in first quarter 2003, like MetTel, will pay more than the “appropriate amount” unless the Commission changes the true-up process for first quarter 2003 or grants a waiver of these provisions. This is because the true-up process will not take into account actual revenues for that quarter but will use only forecasts.

³ FCC 04-170, CC Docket No. 96-45, Released July 20, 2004.

⁴ Order and Second Order on Reconsideration. 18 FCC Rcd 4818, ¶ 15 (2003).

⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 et al., Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-239, rel. December 13, 2003.

Request for Waiver

Section 1.3 provides that the Commission may waive its rules “if good cause therefore is shown.”⁶ Generally, a waiver is appropriate if “special circumstances warrant deviation from the general rule and such deviation will serve the public interest.”⁷ A waiver is appropriate here because of the unique circumstances of the change in the rules that affect only the first quarter of 2003 and only companies, such as MetTel, that under-projected their revenues for that quarter. This interim process clearly places MetTel at an unfair disadvantage by requiring MetTel to pay true-up amounts in excess of the appropriate contribution for second through fourth quarters of 2003.

Section 254 of the Communications Act of 1934, as amended (the “Act”), requires that interstate telecommunications providers contribute to the universal service mechanisms on an equitable and nondiscriminatory basis.⁸ Consistent with the intent of Section 254, this Commission found, in Order FCC-04-170, that “Petitioners would contribute more than an equitable share, because they would be assessed a larger true-up amount under the current true-up process than would otherwise occur, because they under-projected their first quarter 2003 revenues.”⁹ This Commission went on to conclude “that the Petitioners have demonstrated special circumstances that warrant deviation from the Commission’s universal service true-up procedures for 2003” and that “this result is consistent with the public interest.”¹⁰ With this backdrop, the Commission waived the current true-up procedures for AT&T, SBC Communications and Verizon.

⁶ 47 C.F.R. § 1.3.

⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *se also*, *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁸ 47 U.S.C. § 254(d).

⁹ FCC 04-170, CC Docket No. 96-45, Released July 20, 2004.

¹⁰ *Id.*

MetTel stands in the shoes of those who have come before it seeking similar waivers. MetTel under-projected first quarter 2003 revenues and, absent waiver of the current true-up procedures, stands to contribute substantially more than its appropriate share.

Conclusion

Wherefore, MetTel respectfully requests that the Commission grant it a waiver and allow the Administrator to net out MetTel's actual first quarter 2003 revenues from its calendar year 2003 revenues to determine its actual revenues for the remainder of 2003.

Respectfully submitted,



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